IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8631 of 2003

with

SPECIAL CIVIL APPLICATION No 4660 of 2001

with

SPECIAL CIVIL APPLICATION No 5667 of 2001

with

SPECIAL CIVIL APPLICATION No 8703 of 2003

with

SPECIAL CIVIL APPLICATION No 10998 of 2000

with

SPECIAL CIVIL APPLICATION No 128 of 2001

with

SPECIAL CIVIL APPLICATION No 810 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HALOL MERCANTILE CO OP BANK LTD. THRO.ACCOUNTANT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8631 of 2003
MR BS PATEL for Petitioner No. 1
MRS RANJAN B PATEL for Petitioner No. 1
MR HD DAVE, Ld. AGP for Respondent No. 1-3
(in all the matters)
2. Special Civil Application No. 4660 of 2001
MR TUSHAR MEHTA for Petitioner No. 1
MR HD DAVE, Ld. AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 21/07/2004

COMMON ORAL JUDGEMENT

1. In all these petitions more or less common questions arise for consideration and, therefore, they are being dealt with this common judgement.

2. Special Civil Application No.8631/2003 is preferred by the Halol Mercantile Coop. Bank Limited for challenging the notice dated July 12, 2001, whereby the District Registrar has called upon the Manager of the Bank to comply with the circulars issued by the Office of the Registrar for giving representation to Scheduled Cast and Scheduled Tribe members as well as marginal and small farmers in the Managing Committee of the Bank.

3. Special Application No.8703/2003 is preferred by Shree Janata Sahakari Bank Limited for quashing the same notice dated 12-7-2001 issued by the District Registrar, Godhra, but addressed to the petitioner Bank for giving representation to Scheduled Cast and Scheduled Tribe members as well as marginal and small farmers in the Managing Committee as per Section 74B of the Act.

4. Special Civil Application No.4660/2001 is

preferred by Vejalpur Nagrik Sahakari Bank Limited and Others for the declaration that the notification dated 5-4-1982 of the State Government is not applicable to the petitioner Bank and in alternative the petitioner has prayed for quashing of the said notification.

5. Special Civil Application No.5667/2001 is preferred by Halol Urban Coop. Bank Limited for challenging the notice dated 10-7-2001 (correct dated is 12-7-2001) issued by the District Registrar, Godhra which is of the same type as it is in the proceedings of Special Civil Application No.8631/2003 for giving representation to Scheduled Cast and Scheduled Tribe members as well as marginal and small farmers in the Managing Committee of the Bank.

6. Special Civil Application No.10998/2000 is preferred by Veraval People's Coop. Bank for challenging the communication dated 10-8-2000 issued by the District Registrar for giving representation to Scheduled Cast and Scheduled Tribe members as well as marginal and small farmers in the Managing Committee of the Bank on the basis of notification dated 5-4-1982 issued by the State Government in exercise of the power under Section 74B of the Act. The petitioner has also amended the petition by adding the prayer that the notification dated 5-4-1982 is not applicable to the petitioner or in alternative to quash and set aside the notification.

7. Special Civil Application No.128/2001 is preferred by Jitpura Milk Producers' Cooperative Society Ltd., for challenging the notification dated 5-4-1982 and also the letter of the District Registrar dated 20th September, 2000 based on the said notification for giving representation to Scheduled Cast and Scheduled Tribe members as well as marginal and small farmers in the Managing Committee of the Society.

8. Special Civil Application dated 8-10-2001 is preferred by Gadhka Dudh Udpadak Sahakari Mandali Ltd., for the same relief as prayed by the petitioner of SCA No.128/2001.

9. I have heard Mr.B.S.Patel, Mr.Baiju Joshi for Mr.Shirish Joshi and Mr.Tushar Mehta appearing for the petitioner in SCA No.4660/2001 as well as Mrs.Avni Mehta in the concerned petition and I have also heard learned AGP, Mr.H.D.Dave, who is appearing for respondent Government Authorities in all the matters.

10. The learned Counsel appearing on behalf of the

petitioners have raised mainly three contentions. The first one is that the notification dated 5-4-1982 cannot be implemented by the authority, because when the notification was issued by the State Government the provisions of the Act for giving representation to Scheduled Cast and Scheduled Tribe members as well as marginal and small farmers was different and, therefore, the said notification which was issued when earlier Section 74B was in operation cannot be said as operative after substitution and insertion of the new provisions of Section 74B of the Act. The second contention raised is that even if the notification is to apply there cannot be general orders without examining the population of Scheduled Cast and Scheduled Tribe and all small and marginal farmers in the area of operation of specific Coop. Society. The third contention which has been raised is that there is no question of giving representation to small and marginal farmers in primary level Coop. Bank which has to operate in urban area.

11. Before considering the contentions raised on behalf of the petitioner, it is necessary to consider that Section 74B which remained in statute book for the period from 7-1-1982 to 26-4-1982 was as under:

"74B-Reservation of seats on committee on certain societies for Scheduled Castes and Tribes, a small and marginal farmers. - (1) On the committee of such society or class of societies as the State Government may, by general or special order direct, two seats shall be reserved, one for the person belonging to the Scheduled Castes and the Scheduled Tribes and one for the persons who are small farmers and marginal farmers.

(2) Where any of such reserved seats is not filled by election or appointment the committee shall fill such seat by co-option of a member on the committee from amongst persons eligible to fill the reserved seat.

Explanation.- For the purposes of this section-

(1) the expression 'marginal farmer' and 'small farmer' shall have the meanings respectively assigned to them in clauses (q) and (p) of sec. 2 of the Gujarat Rural Debtors' Relief Act, 1976 (President Act 35 of 1976).

(2) the expression 'Scheduled Castes' means, such castes, races or tribes or parts of or groups within, such castes, races or tribes as are deemed to be Scheduled Castes in relation to the State of Gujarat under article 341 of the Constitution of India;

(3) the expression 'Scheduled Tribes' means such tribes or tribal communities or parts of, or groups within, such tribes or tribal communities as are deemed to be Scheduled Tribes in relation to the State of Gujarat under article 342 of the Constitution of India."

12. As such after enactment of Gujarat Act No.23 of 1982, Section 74B is substituted and is brought on the statute book as under:

74B. Reservation of seats on committees of certain societies, for Scheduled Castes and Tribes and small and marginal farmers.- (1) On the committee of such society or class of societies as the State Government may, by general or special order direct, two seats shall be reserved as follows, namely;)

(a) one for the persons belonging to the Scheduled Castes and the Scheduled Tribes or to both the Scheduled Castes and the Scheduled Tribes as the State Government may, having regard to the population of the Scheduled Castes and the Scheduled Tribes in the area of operation of the society, specify, and

(b) one for the person who are small farmers and marginal farmers.

(2) Where any of such reserved seats is not filled by election or appointment the committee shall fill such seat by co-option of a member on the committee from amongst other members.

Explanation.- For the purposes of this section-

(1) the expression 'marginal farmer' and 'small farmer' shall have the meanings respectively assigned to them in clauses (g) and (p) of sec. 2 of the Gujarat

Rural Debtors' Relief Act, 1976; (President Act 35 of 1976).

(1A) the expression "population" in relation to the area of operation of a society means the population of that area as ascertained at the last proceeding census.

(2) the expression "Scheduled Castes" means such castes, races or tribes or parts of or groups within, such castes, races or tribes as are deemed to be Scheduled Castes in relation to the State of Gujarat under article 341 of the Constitution of India;

(3) the expression 'Scheduled Tribes' means such tribes or tribal communities or parts of, or groups within, such tribes or tribal communities as are deemed to be Scheduled Tribes in relation to the State of Gujarat under article 342 of the Constitution of India."

13. There is no dispute on the point that when the notification dated 5-4-1982 was issued Section 74B, as it existed, was on the statute book as referred to hereinabove. Even if the notification is considered, the same is issued in exercise of the powers conferred by Sub-section (1) of Section 74B of Gujarat Cooperative Societies Act, 1961 and the said exercise of the power is on 5-4-1982. Therefore, when after 26-4-1982 Section 74B is substituted by Gujarat Act No.23 of 1982, the exercise of the power by the State Government of issuing the notification on 5-4-1982 is no more continued to remain in force and, therefore, when Section 74B as then was in existence did not continue to remain on statute book, in normal circumstances unless it is expressly saved by any provisions of law, the notification dated 5-4-1982 would automatically lapse. It is not brought to the notice of the Court that such notification was saved by Gujarat Act No.23 of 1982. Under these circumstances, it may not be necessary for this Court to examine the aspects for challenge to the notification dated 5-4-1982 on the ground as to whether such notification would apply to the petitioners or on the ground that whether such notification is legally valid or deserves to be quashed and set aside or not.

14. Even if Section 74B then in existence is

considered with Section 74B which is on the statute book, it appears that the State Government has power by general or special order to provide for reservation of two seats, one for the persons belonging to the Scheduled Castes or Scheduled Tribes or both Scheduled Castes and Scheduled Tribes, but as per Section 74B of the Act now on statute book before exercise of such power, it is necessary for the State Government to consider the population of Scheduled Castes and Scheduled Tribes in the area of operation of the Society. Similarly, as per the provisions of Section 74B, the State Government has power to issue general or special order for reservation of one seat for small and marginal farmers. It appears that the District Registrar in all the impugned communication, by total non-application of mind, and only on the basis of the government notification/order dated 5-4-1982, has directed for compliance of the same to the concerned petitioner societies. As such, on reasonable construction for such exercise of power under Section 74B of the Act, it can be said that the intention of the legislature is to give power to the State Government to make reservations in the Managing Committee of the Society for Scheduled Castes and Scheduled Tribes or for small and marginal farmers. It may be that while exercising the power, the State Government may be guided by its on policy, but in a case where the general or special order is to be issued for such purpose, it would be necessary for the State Government to consider the population of Scheduled Castes and Scheduled Tribes in the area of operation of the Society concerned. Such exercise of power in all cases cannot be construed for each Society separately, but it can be for such Societies having similar character. For example, after considering population of Scheduled Castes and Scheduled Tribes in any Taluka, the State Government may provide for giving representation or making reservations for seats in the Managing Committee of a society having working area of that Taluka and thereafter may also provide for reservations for whole Taluka. It may be that while considering the said aspect, the State Government may consider the actual representation in the Managing Committee of such Societies by the persons belonging to Scheduled Castes and Scheduled Tribes. The State Government may also consider the actual representation of small and marginal farmers in a Coop. Society where such reservation is to be made. It will be for the State Government to consider the details and to exercise the power under Section 74B. If a special order is issued by the State Government for a specific Coop. Society, then in that case, the aforesaid exercise of power at the level of the State Government may be required for that

specific society. However, in a case where general orders are issued and when such orders are to be implemented in a particular Coop. Society, it may be for the officer concerned, may be District Registrar or any other competent Authority to examine the other remaining relevant aspects and then to give effect to the orders which are passed by the State Government in general for the Societies having similar character namely Taluka, District, State level etc., or similar area of operation.

15. As such if aforesaid is considered for examining the legality of the Government order dated 5-4-1998, it appears that the same are not considered. Moreover, if the impugned communications issued by the District Registrar are considered, it is apparent that none of the aspects is examined even by him which were required to be considered and the District Registrar concerned has addressed the communications to the concerned petitioner Societies without even gathering information as to whether there is representation of small and marginal farmers in the Managing Committee or not and, therefore, the communications issued by the District Registrar are without proper application of mind and hence the same would be rendered violative of Article 14 of the Constitution of India.

16. As regards the contentions of the learned Counsel appearing for the petitioners that there is no question of representation of small and marginal farmers in a preliminary level Coop. Bank, I am of the view that it may not be necessary for this Court to examine the said aspect at this stage. If any person is to be given representation as the member of Managing Committee, such person should be having the capacity as the member of that Society. If the byelaws of the Bank provides for membership of farmers, then the question may also arise for giving representation. If the bye-laws do not provide, the the Government may provide for necessary amendment in the bylaws unless it is prohibited by the policy of the Government for any banking business. As such it will be for the government to consider the said aspects and to take appropriate decision, but it cannot be accepted that in no primary level Coop. Bank there will be any person holding membership, who is small and or marginal farmer.

17. Even otherwise also the exercise of the power on the part of the authority in an omnibus manner cannot be permitted in the eye of law. The reference may be made to the decision of this Court in case of "Agricultural Produce Market Committee, Borsad & Ors. v. State of

Gujarat & Ors.", reported in 2003(1) GCD, 134. It will be for the State Government or the authority, as the case may be, in view of the observations made hereinabove to examine and to give appropriate and suitable directions for giving representation and also for giving effect to the order, if any, passed by the State Government in exercise of the power under Section 74B of the Act.

18. In view of the aforesaid discussion, the notification dated 5-4-1982 issued by the State Government in purported exercise of the power under Section 74B (as then existed) cannot be enforced against the petitioner society concerned. The impugned communications issued by the District Registrar on the basis of the said notification dated 5-4-1982 of the State Government consequently are also quashed and set aside. However, it will be open to the State Government to issue a general or special order in exercise of the power under Section 74B of the Act (now on statute book) after taking into consideration the observations made by this Court hereinabove and to take further action in accordance with law.

19. All these petitions are allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, no cost.

21-7-2004 (Jayant Patel, J.)

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